

**United States Department of Energy
Office of Hearings and Appeals**

In the Matter of Gary Galat)
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Filing Date: May 26, 2021) Case No.: FIA-21-0010
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Issued: June 10, 2021

Decision and Order

On May 26, 2021, Gary Galat (“Appellant”) appealed a determination letter issued by the Department of Energy’s (DOE) Office of Public Information (OPI) (FOIA Request No. HQ-2021-00399-F). In that determination letter, OPI responded to Appellant’s request under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by DOE regulations codified at 10 C.F.R. Part 1004, in which Appellant sought records regarding his deceased mother. FOIA Request at 1, 4–5 (February 16, 2021).^{*} OPI conducted a search and located no responsive documents. Determination Letter (March 11, 2021). Appellant’s present appeal challenges the adequacy of the search. As explained below, we deny Appellant’s appeal.

I. Background

On February 16, 2021, the Appellant submitted a FOIA request seeking the following information:

Medical, Personnel Records, Radiation Exposure Reports, Occupational and Industrial Records, [P]ersonnel [C]learance [M]aster [C]ard, gate or site admittance records, and pay records on Ms. Iris Jane Hill (deceased).

Determination Letter at 1 (March 11, 2021). OPI referred Appellant’s FOIA request to the DOE Office of Legacy Management (LM) to perform a search. *Id.* LM conducted searches of archived onsite records using specific search term combinations of Ms. Hill’s first and last name; and Ms. Hill’s first, middle and last name. LM Search Certification (February 22, 2021); E-mail from OPI to OHA (May 28, 2021). LM also conducted a search using Ms. Hill’s social security number with and without dashes. LM Search Certification (February 22, 2021).

In its Determination Letter to Appellant, OPI stated that LM had performed a search, but was unable to locate records responsive to Appellant’s FOIA request. Determination Letter at 1. In his appeal, Appellant alleged that OPI failed to perform an adequate search for responsive records. Appeal at 2 (May 26, 2021). In support of this appeal, Appellant provided documents indicating

^{*} The original FOIA request was transferred from the Oak Ridge Office (ORO) to OPI to search for responsive records pertaining to the requester’s mother that may be located at DOE’s Fernald facility. FOIA Request at 2.

that Ms. Hill worked for a contractor at the DOE Atomic Facility in Fernald, Ohio (hereinafter cited as “Fernald site”) during the early 1950’s. Appeal at 2, 5–9.

A representative of OHA contacted LM to obtain additional information concerning the search performed. The LM representative who conducted the search explained that LM maintains records for former employees from the Fernald site “and this does include some contractors during the 1950s.... [but] [n]ot all contractors/sub-contractors were required to turn over records regarding employees.” E-mail from LM to OHA (June 7, 2021); *see* LM Search Certification at 3 (February 22, 2021). The LM representative clarified that “LM also inherited these records upon its creation in 2003.” E-mail from LM to OHA. The LM representative further explained that if the requested documents existed, they could potentially be under LM jurisdiction, “however, if former employees leave a site under LM’s jurisdiction and go to other sites under a different department’s jurisdiction, sometimes the records in question are transferred on to those sites or custodians.” *Id.*

II. Analysis

The FOIA requires agencies to make publicly available records that are reasonably described in a written request, as long as those records are not exempt from disclosure. 5 U.S.C. §§ 552(a)(3)(A), (b). In responding to a FOIA request, an agency need not conduct an exhaustive search of each of its record systems; rather, it need only conduct a reasonable search of “all systems ‘that are likely to turn up the information requested.’” *Ryan v. FBI*, 113 F. Supp. 3d 356, 362 (D.D.C. 2015) (quoting *Oglesby v. U.S. Dep’t of the Army*, 920 F.2d 57, 68 (D.C. Cir. 1990)). The reasonableness of a search depends on the facts of each case. *Coffey v. Bureau of Land Mgmt.*, 249 F. Supp. 3d 488, 496 (D.D.C. 2017) (citing *Weisberg v. DOJ*, 745 F.2d 1476, 1485 (D.C. Cir. 1984)).

A lack of responsive records does not necessarily indicate that a search was unreasonable. Indeed, a search’s adequacy is “determined not by the fruits of the search, but by the appropriateness of [its] methods.” *Iturralde v. Comptroller of the Currency*, 315 F.3d 311, 315 (D.C. Cir. 2003). We have not hesitated to remand a case where it is evident that the search conducted was, in fact, inadequate. *See, e.g., American Oversight*, OHA Case No. FIA-19-0010 (2019).

The Appellant argues that responsive records must exist because he has documents indicating that Ms. Hill worked for a contractor for the Fernald site. However, those documents themselves are not dispositive of the issue of the adequacy of LM’s search. It is the appropriateness of the search methodology that determines whether the search was adequate. Given the description of the search conducted by LM, we find that the search was reasonably calculated to discover responsive documents. Since LM maintains records for former employees from the Fernald site including records of some contractors during the 1950s, LM was a logical choice for the location of potential records. Therefore, LM is the office most likely to possess responsive records if they exist.

Moreover, we find that the search terms and search string combinations of Ms. Hill’s first, middle, and last name as well as her social security number, used to conduct LM’s search were reasonably calculated to cover any responsive records.

As described above, LM inherited records for former employees of the Fernald site when LM was formally established in 2003. However, the LM representative clarified that not all contractors or sub-contractors of the Fernald site were required to turn over records regarding employees and that

some employee records were removed from Fernald. This information supports the possibility that even if records concerning Ms. Hill were previously in existence, those records may not be currently in LM's possession. In sum, we conclude that LM conducted a search reasonably calculated to uncover the documents sought by the Appellant, and the search was therefore adequate.

III. Order

It is hereby ordered that the appeal filed on May 26, 2021, by Gary Galat, Case No. FIA-21-0010, is denied.

This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect the right to pursue litigation. OGIS may be contacted in any of the following ways:

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